IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8996 OF 2004

M/s. Jyoti Marketing Co. & Anr ...Petitioners

Versus

M/s. Spartan Electricals ...Respondent

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Mr. K.K. Malpathak, counsel for Petitioners

Mr.S.M. Oak counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 1ST FEBRUARY, 2005

P.C.:-

1. Heard Mr. Malpathak, the learned counsel for the petitioners who are defendants in Summary Suit No. 38 of 2003 filed before the Civil Judge, Senior Division at Thane. In the said suit, the defendants presented an application at Exh.14 under Order XXXVII Rule 3(5) of C.P.C. praying for grant of leave to defend the suit. This application has been rejected by the impugned order dated 20.9.2004 passed by the learned C.J.S.D. and conditional leave to defend the suit has been granted subject to deposit of 50% amount within one month from the date of the said order.

2. Mr. Malpathak submitted that the parties are

maintaining the running account and MOU dated 6.1.2002 was executed under pressure and therefore, even if the defendants had signed the same, the terms of the MOU should not bind them. The issue regarding the inferior quality material having been rejected was also agitated before the court below and taking into consideration the terms of MOU dated 6.1.2002 and other documentary evidence, the trial Court held that the defendants had admitted the liabilities and therefore, the conditional leave was granted. The view taken by the trial court cannot be termed as grossly erroneous calling for interference in this petition under Article 227 of the Constitution and in any case this order will not come in the way of either of the parties to get the summery suit decided on its own merit.

3. Hence, the petition fails and the same is hereby rejected summarily. The 50% amount as directed by the trial court shall be deposited on or before 14.3.2005 in the trial Court.